



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

FILE # [REDACTED]

Date:

JUN 21 2000

IN RE: Applicant: [REDACTED]

APPLICATION: [REDACTED]

IN BEHALF OF APPLICANT: [REDACTED]

Identifying data removed to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

JUN 21 2000

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the matter will be remanded to him for further action.

The applicant is a native and citizen of Honduras who was present in the United States without a lawful admission or parole on March 15, 1998. The director denied the application for Temporary Protected Status (TPS) under § 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the applicant had been convicted of a felony in the United States.

On appeal, counsel for the applicant states that the Service is basing its decision on incorrect information. Counsel submits a police report which indicates that the applicant is not the same person as the individual who was convicted under the same name and date of birth for the crimes of Grand Theft, Dealing in Stolen Property and Possession of a Motor Vehicle with an Altered Vehicle Identification Number on May 8, 1991. Counsel states that the applicant believes that it may have been one of his relatives who used his personal information when they were arrested. Counsel states that the applicant has never been arrested and has never committed any crime.

Based on the strength of the Miami-Dade Police Department report and the differing signatures between the individual who was convicted of the crimes and deported in May 1992 and the present applicant, the director's decision will be withdrawn. The matter will be remanded to him to resolve the matter regarding the applicant's alleged mistaken identity and to determine whether the applicant is not or is not the individual previously convicted under the same name and deported from the United States, as the record seems to reflect. The director will render a new decision based on that determination. Should the director deny the application again, he will certify that decision to the Associate Commissioner for review. Should the application be approvable, the applicant should be assigned a new Service file number.

ORDER: The director's decision is withdrawn. The matter is remanded to him for further action and the rendering of a new decision which, if adverse to the applicant shall be certified to the Associate Commissioner for review.